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20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

22

23 **BOBBY SHAWN JANOE,** Petitioner,
24 v.
25 **JAMES TILTON, Secretary, et al.,** Respondent.

CV 08-0420 JLS (POR)

ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS AND
MEMORANDUM OF POINTS AND
AUTHORITIES

Judge: The Honorable Louisa S.
Porter

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27 Petitioner Bobby Shawn Janoe, a California state prisoner proceeding *pro se*, alleges that he
28 was denied due process at a disciplinary hearing. This Court issued an order directing
Respondent James Tilton, Warden at California Substance Abuse Treatment Facility, to file an
answer to the Petition. This answer is submitted pursuant to that order.

29

ANSWER TO THE PETITION

30 In response to the Petition for Writ of Habeas Corpus filed on March 5, 2008, Respondent
31 hereby admits, denies, and alleges the following:

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1 1. Petitioner is lawfully in the custody of the California Department of Corrections and
 2 Rehabilitation following his 1994 conviction for first degree murder while lying in wait (Pen.
 3 Code, §§ 187(a) and 190.2(a)(15)). (Lodg. 1 - Probation Officer's Report, p. 4.) The allegation
 4 that Petitioner had been convicted of two prior serious felonies was found to be true. (Pen. Code,
 5 § 667(a)). (Lodg. 1, pp. 3-4; Lodg. 2 - Abstract of Judgment.) Petitioner was sentenced to life
 6 without the possibility of parole plus a determinate term of ten years. (Lodg. 2.) Petitioner
 7 completed his determinate term of ten years on or about August 31, 1998, and is currently
 8 serving his life without the possibility of parole sentence. (Lodg. 3 - Chronological History.)
 9 Petitioner does not challenge his conviction in the current proceeding. (*See Pet.*)

10 2. On July 5, 2006, the Security and Investigations Unit concluded an investigation
 11 regarding altered checks received by Petitioner. (Lodg. 4 - Rules Violation Report, p. 1.) On
 12 May 17, 2006, the Inmate Trust Account Office received checks for \$5,727.19 and \$5,190.87,
 13 which were made out to Petitioner and which had been determined to have been altered. (Lodg.
 14 4, p. 1.) The checks were accompanied by a letter from Petitioner's brother asking Petitioner to
 15 keep half the money, and to send the other half back to him in a State of California check once
 16 the checks had cleared Petitioner's inmate trust account. (Lodg. 4, pp. 1, 3.) On May 25, 2006,
 17 Petitioner submitted a Trust Account Withdrawal Order for the amount of \$1,100.00 for financial
 18 assistance for his mother. (Lodg. 4, p. 3.) Investigation revealed that ten additional altered
 19 checks were mailed to Petitioner from his brother from April 27, 2006, through May 30, 2006,
 20 totaling \$3,771.71. (Lodg. 4, p. 1.) Four of the checks had been stolen by Petitioner's brother.
 21 (Lodg. 4, p. 2.) Petitioner had utilized some of the funds and was provided with copies of his
 22 trust account balances that reflected deposit and withdrawal activities. (Lodg. 4, p. 2.) Prior to
 23 April 27, 2006, Petitioner had no money in his trust account. (Lodg. 4, p. 2.) Six empty
 24 envelopes labeled with a return address for Petitioner's brother, and listing check numbers and
 25 check amounts, were found in Petitioner's cell. (Lodg. 4, p. 3.)

26 3. Petitioner received a copy of the Rules Violation Report, Log Number 07-0-A-005,
 27 outlining the above offense, on July 12, 2006. (Lodg. 4, p. 2.) Thus, the Rules Violation Report
 28 was served on Petitioner in a timely manner.

1 4. On August 4, 2006, Petitioner received a disciplinary hearing regarding the charge of
 2 possession of stolen property and check fraud. (Lodg. 5 - Serious Rules Violation Report, p. 2.)
 3 The hearing officer reviewed the report and charge against Petitioner, who said he understood the
 4 charge and was prepared to begin. (Lodg. 5, p. 2.) Petitioner pled not guilty to the charge against
 5 him. (Lodg. 5, p. 2.) Petitioner chose not to have witnesses at the hearing, but submitted three
 6 typed declarations from himself, his mother, and his brother Brian Scott. (Lodg. 5, p. 2.) The
 7 Senior Hearing Officer found Petitioner guilty of possession of stolen property and check fraud,
 8 and assessed a 150-day credit loss. (Lodg. 5, p. 12.) As a result of the guilty finding, Petitioner
 9 also lost certain telephone and yard privileges, and was ordered to reimburse the state for the loss
 10 of state funds. (Lodg. 5, p. 12.) The Senior Hearing Officer did not assess Petitioner an
 11 administrative segregation term. (Lodg. 5, p. 12.)

12 5. Respondent admits that Petitioner was found guilty of possession of stolen property
 13 and check fraud and assessed a 150-day credit loss and loss of certain privileges, but denies that
 14 Petitioner's due process rights were violated. (Lodg. 5, p. 12.)

15 6. Respondent admits that Petitioner exhausted his administrative appeals with respect to
 16 his challenge to the Senior Hearing Officer's finding of guilt. Petitioner did not challenge his
 17 placement in administrative segregation in his administrative appeal. (Lodg. 6 - Director's Level
 18 Appeal Decision - dated March 14, 2007.)

19 7. Respondent admits that on May 14, 2007, Petitioner challenged the disciplinary finding
 20 in the Imperial County Superior Court. (Lodg. 7 – Super. Ct. Pet.) Petitioner did not challenge
 21 his placement in administrative segregation in his superior court petition. (*See* Lodg. 7.) The
 22 superior court denied the petition on June 22, 2007, and held that Petitioner was afforded due
 23 process and procedural safeguards, and some evidence supported the guilty finding. (Lodg. 8 -
 24 Super. Ct. Denial.)

25 8. Petitioner filed a petition in the California Court of Appeal challenging the disciplinary
 26 finding. (Lodg. 9 – Cal. App. Ct. Pet.) Petitioner did not challenge his placement in
 27 administrative segregation in his appellate court petition. (*See* Lodg. 9.) The court of appeal
 28 denied the petition on November 6, 2007, and held that Petitioner was afforded due process and

1 procedural safeguards, and some evidence supported the guilty finding. (Lodg. 10 - Cal.App. Ct.
 2 Denial.)

3 9. Petitioner filed a petition in the California Supreme Court challenging the disciplinary
 4 finding. (Lodg. 11 – Pet. for Writ of Habeas Corpus.) Petitioner did not challenge his placement
 5 in administrative segregation in his supreme court petition. (*See* Lodg. 11.) The California
 6 Supreme Court summarily denied the petition on January 16, 2008. (Lodg. 12 - Cal. Sup. Ct.
 7 Order.)

8 10. Respondent denies that Petitioner appears to have exhausted his state court remedies.
 9 While Petitioner exhausted his challenge regarding the finding of guilt at his August 4, 2006
 10 disciplinary hearing, Petitioner failed to exhaust his claim that his subsequent assignment to
 11 administrative segregation constitutes an atypical and significant hardship and that he should be
 12 released from administrative segregation. (*See* Pet.)

13 11. Respondent alleges that Petitioner fails to raise a cognizable claim for federal habeas
 14 corpus relief because Petitioner’s claim does not affect the “legality or duration” of his
 15 confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.1991), quoting, *Preiser v. Rodriguez*,
 16 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section
 17 2254 Cases. Petitioner is currently serving a life without the possibility of parole sentence and
 18 thus, is not entitled to shorten his sentence with good time credits. (Lodg. 2.) The purportedly
 19 assessed loss of credits at the disciplinary hearing has no affect on the duration of Petitioner’s
 20 confinement. Where there is no statutory right to good time credits, there is no federal liberty
 21 interest in avoiding the loss of good time credits. *Superintendent v. Hill*, 472 U.S. 445, 448, 454,
 22 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) (finding that where inmates have a statutory right to
 23 good time credits, the loss of such credits affects a liberty interest protected by the due process
 24 clause by “extending the length of imprisonment”).

25 12. Respondent admits that the Petition is timely filed under 28 U.S.C. § 2244.

26 13. Respondent alleges that the decisions of the state courts complied with federal due
 27 process requirements. *Superintendent v. Hill*, 472 U.S. at 454 (citing *Wolff v. McDonnell*, 418
 28 U.S. 539, 563 (1974)).

1 14. Respondent denies that an evidentiary hearing is necessary in this matter.

2 15. Except as expressly admitted herein, Respondent denies each and every allegation of
3 the Petition, and specifically denies that the rule violation report, or hearing on the report, were in
4 any way improper, or that any of Petitioner's rights have been violated.

5 WHEREFORE, Respondent respectfully requests that the Petition for Writ of Habeas
6 Corpus be denied, and that these proceedings be dismissed.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This is a case brought by a state prisoner challenging the issuance of a rules violation report and the credit forfeiture that was purportedly assessed following a guilty finding at his disciplinary hearing. Petitioner also challenges his assignment to administrative segregation following the guilty finding. Petitioner contends there is insufficient evidence to find Petitioner guilty of the serious offense, and that his assignment to administrative segregation imposes an atypical and significant hardship. The Petition should be dismissed because it raises an unexhausted claim regarding Petitioner’s placement in administrative segregation and because it fails to raise a cognizable claim for federal habeas corpus relief. Even if the Petition is not dismissed, the Petition should be denied because the state court properly found that Petitioner’s due process rights were not violated and that some evidence supported the guilty finding.

ARGUMENT

14 I. THE COURT SHOULD DISMISS THE PETITION BECAUSE PETITIONER
15 FAILED TO EXHAUST HIS STATE COURT REMEDIES WITH RESPECT TO
HIS CHALLENGE TO HIS PLACEMENT IN ADMINISTRATIVE
SEGREGATION.

17 Petitioner raises the argument that his assignment to administrative segregation after the
18 disciplinary hearing constitutes an atypical and significant hardship and that he should be
19 released from administrative segregation. (See Pet.) Petitioner did not challenge his placement
20 in administrative segregation in his state habeas corpus petitions. (See Lodg. 7, 9, and 11.) As
21 such, Petitioner has failed to exhaust his state court remedies. A petition containing exhausted
22 and unexhausted claims is subject to dismissal. *Rose v. Lundy*, 455 U.S. 509, 522, 102 S.Ct.
23 1981, 1205, 71 L. Ed. 2d 379 (1982). Dismissal of mixed petitions is necessary because it
24 encourages inmates to return to state court to exhaust his claims or to resubmit the habeas
25 petition with only exhausted claims. *Id.* In the alternative, upon the showing of good cause for a
26 petitioner's failure to raise the claim in state court and upon a showing that the unexhausted
27 claims are not plainly meritless, the court may issue a stay to hold the petition in abeyance

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1 pending exhaustion of the claims in the mixed petition. *Rhines v. Weber*, 544 U.S. 269, 277-278,
 2 125 S. Ct. 1528, 161 L. Ed. 2d 440 (2005).

3 Here, the unexhausted claim is meritless since a prisoner's placement in "segregated
 4 confinement does not present the type of atypical, significant deprivation in which a State might
 5 conceivably create a liberty interest." *Sandin v. Conner*, 515, U.S. 472, 486, 115 S. Ct. 2293,
 6 132 L. Ed. 2d 418 (1995). Further, contrary to Petitioner's contention, the Senior Hearing
 7 Officer did not assess Petitioner an administrative segregation term following the guilty finding,
 8 and thus, even if the rules violation finding were reversed, Petitioner would not be entitled to
 9 release from segregated confinement. (Lodg. 4, p. 12.) Thus, the Court should not issue a stay
 10 and should dismiss the Petition for failure to exhaust.

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12 **II. THE COURT SHOULD DISMISS THE PETITION BECAUSE PETITIONER HAS
 13 FAILED TO ALLEGE A COGNIZABLE CLAIM FOR FEDERAL HABEAS
 CORPUS RELIEF.**

14 A habeas corpus petition is the correct method for a prisoner to challenge the "legality or
 15 duration" of his confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.1991), quoting, *Preiser
 16 v. Rodriguez*, 411 U.S. 475, 485, 92 S. Ct. 1827, 36 L. Ed. 2d 439 (1973); Advisory Committee
 17 Notes to Rule 1 of the Rules Governing Section 2254 Cases. The only disciplinary sanction that
 18 is properly at issue in a federal habeas corpus case is an inmate's loss of credit that resulted from
 19 the disciplinary action. *Id.* at 487; *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S. Ct. 2963, 41 L.
 20 Ed. 2d 935 (1974). Petitioner has not alleged sufficient facts demonstrating an actual loss of
 21 credit that has extended the length of his confinement, and the record demonstrates that
 22 Petitioner cannot shorten his sentence by earning good time credit. Thus, Petitioner has failed to
 23 allege a cognizable claim for federal habeas corpus relief.

24 Petitioner was sentenced to life without the possibility of parole plus a determinate term of
 25 ten years. (Lodg. 2.) Petitioner completed his determinate term of ten years on August 31, 1998,
 26 and is currently serving his life without the possibility of parole sentence. (Lodg. 3.) Because
 27 Petitioner is serving life without the possibility of parole, he cannot shorten his term with good
 28 time credits. The assessed loss of credits at the disciplinary hearing has no affect on the duration

1 of Petitioner's confinement. Where there is no statutory right to good time credits, there is no
 2 federal liberty interest in avoiding the loss of good time credits. *Superintendent v. Hill*, 472 U.S.
 3 445, 448, 454, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) (finding that where inmates have a
 4 statutory right to good time credits, the loss of such credits affects a liberty interest protected by
 5 the due process clause by "extending the length of imprisonment"). Given that the purported
 6 assessment of credit loss at the disciplinary hearing did not extend the length of imprisonment,
 7 Petitioner has failed to allege a cognizable claim for federal habeas corpus relief.

8

9 **III. THE CALIFORNIA STATE COURT'S DENIAL OF PETITIONER'S CLAIMS
 10 WAS CONSISTENT WITH FEDERAL LAW AND WAS BASED ON A
 REASONABLE DETERMINATION OF THE FACTS.**

11 Even if this Court finds the Petition should not be dismissed for failure to exhaust or failure
 12 to raise a cognizable federal habeas claim, this Court should deny the Petition because the
 13 appellate court's denial of Petitioner's claim was based on a reasonable determination of the
 14 facts, and is not contrary to federal law. The appellate court specifically found that Petitioner
 15 was afforded due process and procedural safeguards, and that some evidence supported the
 16 conclusion reached by the disciplinary authority. (Lodg. 10.)

17 Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), when a state
 18 inmate's claim has been adjudicated on the merits in state court, a federal court may only grant
 19 an application for a writ of habeas corpus on the same claim if the state court's adjudication was
 20 either (1) "contrary to, or involved an unreasonable application of, clearly established Federal
 21 law, as determined by the Supreme Court of the United States"; or (2) "based on an unreasonable
 22 determination of the facts in light of the evidence presented at the State Court proceeding." 28
 23 U.S.C. § 2254(d).

24 Here, the decision of the state court complied with federal due process requirements.
 25 Federal due process requires that when a prison disciplinary hearing may result in the loss of
 26 good time credits, an inmate receive: "(1) advance written notice of the disciplinary charges; (2)
 27 an opportunity . . . to call witnesses and present documentary evidence in his defense; and (3) a
 28 written statement by the factfinder of the evidence relied on and the reasons for the disciplinary

1 action.” *Hill* 472 U.S. at 454 (citing *Wolff*, 418 U.S. at 563). In addition, a prison administrator’s
 2 decision to revoke good time credits must be based on some evidence. *Hill*, 472 U.S. at 455.
 3 Determining whether this some-evidence standard has been met, however, does not require an
 4 “examination of the entire record, independent assessment of the credibility of witnesses, or
 5 weighing of the evidence.” *Id.* at 455-56. Instead, because this standard is “minimally
 6 stringent,” the relevant question is “whether there is any evidence in the record that could support
 7 the conclusion reached by the disciplinary board.” *Id.*

8 The Supreme Court of the United States has held that “[w]here there has been one reasoned
 9 state judgment rejecting a federal claim, later unexplained orders upholding the judgment or
 10 rejecting the same claim rest upon the same ground.” *Ylst v. Nunnemaker*, 501 U.S. 797, 803,
 11 111 S. Ct. 2590, 115 L. Ed. 2d 706 (1991). Here, since the California Supreme Court rejected
 12 the claims in Petitioner’s habeas petition without comment (Lodg. 12), the appellate court’s
 13 decision finding that Petitioner was granted all process due is the last state court reasoned
 14 decision which this Court must review under the AEDPA standards. See *Ylst*, 501 U.S. at 803.

15 As the state court properly determined, Petitioner’s due process rights were met. He
 16 received notice of the disciplinary charge on July 12, 2006, when he was given a copy of the
 17 completed rule violation report. On August 4, 2006, Petitioner received a disciplinary hearing,
 18 had the opportunity to call witnesses, and presented three declarations as evidence. Petitioner
 19 was given a copy of the written decision finding him guilty of possession of stolen property and
 20 check fraud on August 24, 2006. (Lodg. 5, p. 2; Lodg. 10.)

21 Additionally, although Petitioner was not actually assessed a loss of good time credits that
 22 would affect the duration of his sentence, the finding of the Senior Hearing Officer was
 23 nevertheless supported by some evidence. *Hill*, 472 U.S. at 455. The appellate court reasonably
 24 applied *Hill*, finding that there was some evidence that Petitioner was guilty of possession of
 25 stolen property and check fraud. (Lodg. 10.) The appellate court explained that Petitioner was
 26 aware that his inmate trust account “went from zero dollars on April 27, 2006, to almost \$5,000
 27 dollars by May 30, 2006, when fraudulent checks from [P]etitioner’s brother were mailed to
 28 [P]etitioner and deposited in his account,” and when Petitioner used the funds to purchase items

1 and sent money to his mother. (Lodg. 10, p. 2.) In addition, relying on the rules violation report,
 2 the court found that the envelopes with messages from Petitioner's brother and the letter from
 3 Petitioner's brother asking Petitioner to send half the funds back to him in a state issued check,
 4 provided some evidence to support a guilty finding. (Lodg. 10, p. 2.) Thus, the rules violation
 5 report provides some evidence that Petitioner was guilty of possession of stolen property and
 6 check fraud. Thus the appellate court did not unreasonably apply the some-evidence standard as
 7 enunciated in *Hill*.

8 In sum, Petitioner fails to demonstrate that the superior court's findings are based on an
 9 unreasonable determination of the facts. Petitioner's federal due process rights were met during
 10 the disciplinary proceedings, and thus the Petition must be denied. *Hill*, 472 U.S. at 454.

11 **CONCLUSION**

12 For the foregoing reasons, Respondent respectfully requests the Court dismiss the Petition
 13 on procedural grounds and deny the Petition on the merits.

14 Dated: July 11, 2008

15 Respectfully submitted,

16 EDMUND G. BROWN JR.
 Attorney General of the State of California

17 DANE R. GILLETTE
 Chief Assistant Attorney General

18 JULIE L. GARLAND
 Senior Assistant Attorney General

19 HEATHER BUSHMAN
 Supervising Deputy Attorney General

21 /s/Kathleen R. Frey

22 KATHLEEN R. FREY
 Deputy Attorney General
 Attorneys for Respondent

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 25 SD2008600425

1 **DECLARATION OF SERVICE BY U.S. MAIL**

2 Case Name: **Janoe v. Scribner**

3 No.: **CV 08-0420 JLS (POR)**

4 I declare:

5 I am employed in the Office of the Attorney General, which is the office of a member of the
6 California State Bar, at which member's direction this service is made. I am 18 years of age or
older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O.
Box 85266, San Diego, CA 92186-5266.

7 On July 11, 2008, I served the attached **ANSWER TO PETITION FOR WRIT OF HABEAS**
8 **CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United
9 States Mail at San Diego, California, addressed as follows:

10 Bobby Shawn Janoe
J-25333
11 California Substance Abuse Treatment
Facility & State Prison
12 CSATF/SP C-1-112
P.O. Box 5244
13 Corcoran, CA 93212

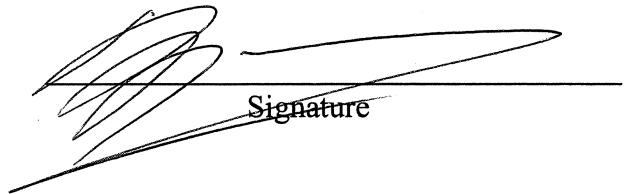
14 ***In Pro Per***

15 I declare under penalty of perjury under the laws of the State of California the foregoing is true
and correct and that this declaration was executed on July 11, 2008, at San Diego, California.

16
17 D. Daswani

18 Declarant

19 70130015.wpd



Signature

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